

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the matter of:	
ORDER OF DISMISSAL, by ALJ Richard Sippel	FCC 17M-35
In and regarding:	
MARITIME COMMUNICATIONS/LAND MOBILE, LLC	FRN: 0013587779
Participant in Auction No. 61 and Licensee of Various Authorizations in the Wireless Radio Services	EB Docket No. 11-71 File No. EB-09-IH-1751
Applicant for Modification of Various Authorizations in the Wireless Radio Services	
Applicant with ENCANA OIL AND GAS (USA., INC.; DUQUESNE LIGHT COMPANY; DCP MIDSTREAM, LP; JACKSON COUNTY RURAL MEMBERSHIP ELECTRIC COOPERATIVE; PUGET SOUND ENERGY, INC.; ENBRIDGE ENERGY COMPANY, INC.; INTERSTATE POWER AND LIGHT COMPANY; WISCONSIN POWER AND LIGHT COMPANY; DIXIE ELECTRIC MEMBERSHIP CORPORATION, INC.; ATLAS PIPELINE-MID CONTINENT, LLC; DENTON COUNTY ELECTRIC COOPERATIVE, INC., DBA COSERV ELECTRIC; AND SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY	Application File Nos. ¹ 0004030479, 0004144435, 0004193028, 0004193328, 0004354053, 0004309872, 0004310060, 0004315903, 0004315013, 0004430505, 0004417199, 0004419431, 0004422320, 0004422329, 0004507921, 0004153701, 0004526264, 0004636537, and 0004604962
For Commission Consent to the Assignment of Various Authorizations in the Wireless Radio Service	
AMTS Site-Based Licenses of Maritime Communications/Land Mobile LLC (now held by Choctaw Holdings LLC)	Call Signs KAE889, WRV374 and WHG750
Maritime Communications/Land Mobile LLC's Second Thursday Application	Docket No. 13-85

To: Marlene H. Dortch, Secretary. Attn: The Commission

**APPEAL OF ORDER OF DISMISSAL, FCC 17M-35
AND UNDERLYING DECISIONS AND ACTIONS IN EB DOCKET 11-71**

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October 30, 2017

¹ Some dismissed after Docket 11-71 commenced.

Pursuant to FCC Rule §1.302 and other relevant law, as a party with legal interest and standing, Warren Havens (“Havens” or “Appellant”) submits this Appeal of (i) the *Order of Dismissal*, **FCC 17M-35**, released September 28, 2017, by ALJ Richard L. Sippel (“Sippel” or “ALJ Sippel”) (herein, the “Sippel Termination Order” or the “Order”) that terminated the case against Maritime Communications/Land Mobile LLC (“Maritime”) in the captioned proceeding 11-71, and (ii) of underlying decisions and actions in the proceeding: (a) the decisions and actions that Havens and/or other “Skytel” parties objected to (by objections, oppositions, and other challenges) in the proceeding, where the objections were not satisfied, and (b) other decisions and actions that are explained herein and in the concurrently filed Polaris PNT PBC Appeal of the matters captioned above (“Polaris Appeal”). Havens joins in the Polaris Appeal, and in addition, states the following. Appellant previously filed a timely notice of appeal with the FCC. This Appeal is being filed electronically in Docket Nos. 11-71 (and 13-85) and under relevant License Call Signs, as permitted by FCC Rule §1.302 and §1.49.

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Introduction, Summary and Other Initial Matters

Introduction and Summary: For the reasons given herein, the Commission should overturn the Order, order a new hearing with a new judge, and stop the ongoing, damaging and extremely harmful violations of FCC law, the public interest, and Havens rights.

I, Havens, joins in the appeal brief concurrently filed by Polaris PNT PBC, including its section on standing. In addition, Havens has already submitted a showing of standing in his memo in support of his Notice of Appeal, filed on October 6, 2017. This showing applies to this Appeal brief. Havens asserts here all of his objections and other challenges raised in this 11-71 proceeding from its commencement to the subject Order.

Havens shows herein that the Order is defective and that it and the underlying proceeding, 11-71, are defective and subject to reversible error, including but not limited to ALJ Sippel's actions on the following: improperly removing Havens as a party in the 11-71 proceeding (along with other parties) and referring a "character question" that had no merit and is not permitted under the rules; for failure to conduct fact-finding and determine relevant facts and law in compliance with FCC 11-64 and its numerous issues; for accepting Maritime's participation, filings and actions without ever determining its actual ownership and control (issue (a)), without which the ALJ nor the FCC Enforcement Bureau knew who were the real parties in interest behind Maritime and who was making the representations and controlling and directing Maritime in 11-71; for never conducting a proper fact-finding to determine the issue of construction under issue (g), but instead basing his finding of construction on renewal applications previously granted by the Wireless Bureau prior to FCC 11-64, and where FCC 11-64 raised material questions of fact as to those renewals and required a fact-finding hearing to determine if those stations were actually constructed (rather than just rely upon bald representations made in renewal applications to the Bureau); for impermissibly allowing the Enforcement Bureau to "jump ship" and put on Maritime's case for it; accepting repeated stipulations by Maritime and Enforcement Bureau in lieu of facts and an analysis of actual facts; for failure to obtain copies of Maritime's records of its site-based stations' alleged construction and operation, that were in 90+ boxes; etc. In addition, Havens shows herein that he clearly has legal standing and interest to file this Appeal, and that this Order must be overturned.

Other Initial Matters: Reference and Incorporation: To the extent that they are accepted by the Commission without exceeding the page limit for this Appeal (and if they are deemed to exceed such limit, then Appellant references and incorporates only up to the pages of his *Memo in Support of and Related to Notice of Appeal* filed October 6, 2017, that discuss his legal interest and standing, up to the point at which this Appeal's page limit is not exceeded, in sequential order, starting on page 2 and continuing to page 12), Appellant references and incorporates herein the below-listed pleadings before the FCC, which provide further facts and arguments as to why Havens has standing and interest, and why the hearing under 11-71 was defective and the Order should be overturned (including his pending appeals of FCC 15M-14 that area already before the ALJ and the Commission). If the below pending pleading are granted, then they are further grounds for overturning the Order, including because certain of them show that Sippel Order FCC 15M-14, improperly removed Havens (and others) as a party from 11-71, and that occurred prior to the Sippel Termination Order and its acceptance of the Maritime and EB last stipulation, which was unopposed because of Sippel's improper removal of Havens (and others) from the 11-71 proceeding.

1. *Memo in Support of and Related to Notice of Appeal*, filed by Warren Havens et al., on October 6, 2017, regarding FCC 17M-35.
2. *Interlocutory Appeal*, filed by Warren Havens et al. on April 29, 2015, regarding FCC 15M-14, in docket 11-71. Errata copy filed. (and the associated reply)
3. *ENL-VSL Interlocutory Appeal as of Right*, filed by Environmental LLC et al. on April 29, 2015, regarding FCC 15M-14, in docket 11-71. (and the associated reply)
4. *Petition Seeking Reconsideration of April 22, 2015 Order on the Basis of Mistake*, filed by Environmental LLC et al. on May 22, 2015, to ALJ Sippel, regarding FCC 15M-14, in docket 11-71.
5. *Supplement to Interlocutory Appeals*, filed by Warren Havens et al., on September 11, 2015, regarding FCC 15M-14, in docket 11-71. (and the associated reply)
6. *Petition for Expedited Declaratory Ruling Regarding § 1.251(f)(3)*, filed by Warren Havens et al., on April 5, 2016, in Dockets 11-71 and 13-85, etc.

Havens also notes here, but without referencing and incorporating them herein, because they are already pending before the FCC, that he has several pending appeals of FCC decisions that

relate to this 11-71 proceeding, including his pending appeals of FCC 16-172, DA 17-450, DA 17-26, and his petition to deny certain assignments by Choctaw, etc. The Commission's FCC 16-172 and subsequent, related Bureau Orders, show that these are matters related to 11-71 and 13-85.

Legal Interest and Standing: It could be no clearer that I have legal interest and standing to file this appeal since the Commission designated me a party in FCC 11-64 and since I was improperly removed as a party by ALJ Sippel and since ALJ Sippel's Order, FCC 15M-14, has severely damaged and prejudiced me since it was used to obtain an receivership over all of the companies I formerly controlled and has irreparably damaged my interests and rights in those companies. In addition, as noted above, I hereby reference and incorporate the facts and arguments in my filing *Memo in Support of and Related to Notice of Appeal*, filed October 6, 2017, at its section "Legal Interest and Standing" commencing on page 4 and continuing to p. 12.

Defects of the Order and Underlying Proceedings and Previous Orders

This proceeding is defective because FCC 15M-14 is defective and because it is an interlocutory decision that had to be promptly decided upon on appeal, but it was never decided upon, from roughly 2.5 years until the case was terminated by the Sippel Termination Order (see my appeals above). See discussion of this objection in the Havens memo to FCC Office of General Counsel regarding the Sippel Termination Order, filed on October 18, 2017. The just noted memo also provides reasons why FCC 15M-14 was invalid. Because that interlocutory decision, FCC 15M-14, was defective, it is reversible error regarding this 11-71 proceeding and the closing Sippel Termination Order.

HDO-OSC, FCC 11-64, directed the ALJ in issue (g) and the one paragraph describing issue (g) to conduct new fact finding regarding whether the site-based stations were timely and properly constructed, and if so, whether they were then kept in permanent operation-service. The ALJ never did that first task of fact finding and factual conclusions that any of the stations

were timely and properly constructed. Therefore, the entire proceeding, on issue (g), is defective. Further, Appellant asserts that it is not proper or possible for ALJ Sippel to accept a stipulation in lieu of facts, especially where the facts and admissions in the record call into question whether the stations were ever constructed, and even if so, whether or not they were constructed in compliance with the AMTS rules in effect at that time requiring overlapping coverage over waterways and continuity of service along that waterway—see e.g., 47 CFR §80.475(a) prior to its impermissible change and retroactive application.

In 11-71, the facts in the record, including Maritime’s own admissions, show that Maritime’s remaining site-based stations were out of operation for many years (over 10) and terminated. For example, Maritime admitted that it abandoned its records for those stations, and that it has not operated ANY of the authorized site-based stations since at least a time in 2007: that is Maritime’s site-based stations have been off the air, not providing service, for almost 10 years (the record in 11-71 and before the FCC actually indicates that all operations ceased in or about 2003-2005 time period, and that explains why Maritime, per its own admission to the FCC (see e.g. Maritime’s Opposition to Petition to Deny renewal of KAE889 and the declaration from David Predmore—which he admitted that John Reardon wrote for him in deposition testimony in the New Jersey Antitrust case—all of which is in the record before ALJ Sippel and the FCC) did not want the station records from Mobex when it purchased the site-based licenses in the first place.²

² See e.g., Maritime Communications/Land Mobile LLC’s Reply to Enforcement Bureau’s Objection to Maritime’s First Draft Glossary, filed August 28, 2012 in Docket No. 11-71, at page 4, where it states, “Maritime has candidly stated that it has not provided AMTS service directly to end users from any of its incumbent stations since 2007....” Also, see e.g., Maritime’s Report Per Order FCC 12M-36, filed August 6, 2012 in Docket No. 11-71, at its pages 1-2, where it states, “As explained in the interrogatory responses, due to a combination of changes in the industry and severe financial hardship, Maritime has not provided AMTS services pursuant to any of its incumbent (site-based) licenses since December 2007....”

Pursuant to the FCC’s own rules and precedents, including its Chicago Order³ on AMTS, which was noted in FCC 11-64 that commenced 11-71, the Maritime site-based stations are permanently discontinued based on the facts and admissions in the record.⁴ The Chicago Order makes clear that AMTS “authorized” station locations had to be kept in operation, not other locations or “fill-in” stations, and that if that was not done, then the stations are permanently discontinued. In this case, Maritime admitted that it has not operated the stations since at least a time in 2007, and that it had no intention to ever rebuild them and resume operations because it was assigning them to Choctaw, and because it did not want the station construction-operational records when it purchased them from Mobex. Thus, for the similar reasons that the FCC found Mobex’s stations permanently discontinued in the Chicago Order, the FCC must overturn ALJ Sippel’s Order and find the stations permanently discontinued—where said discontinuance resulted in automatic termination without specific Commission action. As such, there were no stations left for Enforcement Bureau and Maritime to stipulate to keep, or for ALJ Sippel to accept said stipulation, dismiss the case, and allow Maritime to keep the stations now held in the name of Choctaw.

The Enforcement Bureau and Maritime 9/22/17 stipulation accepted by ALJ Sippel in the Order, absurdly argues, *inter alia*:

8. After the hearing, and at the request of the Presiding Judge, Maritime and Choctaw supplemented the record regarding operations at KAE889 (Locations 3 and 13). Specifically, Maritime and Choctaw submitted a sworn declaration from John Reardon, Choctaw’s Managing Director,

³ *Memorandum Opinion and Order*, FCC 10-39, released 3/16/2010, 25 *FCC Rcd* 3390 (the “Chicago Order”).

⁴ Also, see e.g., FCC 11-64 at its footnote 163, where it states:

163 We note that the Commission previously concluded that Maritime's authorization for a site-based station in Chicago had canceled due to permanent discontinuance of operation. See *Mobex Network Services, LLC*, Memorandum Opinion and Order, 25 FCC Red 3390, 3395 ¶10 (2010), recon. pending.

which states that Choctaw (assignee of these licenses) has contacted the site managers for Locations 3 and 13 regarding new site lease agreements and intends to resume operation of these facilities.

It was improper for ALJ Sippel to allow supplementing of the record, when the trial hearing had already concluded, and when the ALJ and the Commission failed to promptly decide on Havens' appeals so that he participate and challenge any such stipulation. Further, it is irrelevant to the issue of permanent discontinuance of any of the subject stations whether or not John Reardon (one of the "wrongdoers" in Mobex and Maritime per the facts in the record) or Choctaw "has contacted site managers..regarding new site lease agreements and intends to resume operation of these facilities." In fact, this statement shows the stations have not been in operation because "lease agreements" are needed and that it "intends to resume operation". That is, Enforcement Bureau and Maritime have argued that because Choctaw "intends to resume operation", the stations are not out of operation permanently. In other words, if a licensee thinks it is not permanently discontinued, then it is not; that precedent cannot be allowed to stand.

The entire proceeding is also defective because the ALJ and the Enforcement Bureau never obtained the 90+ boxes of documents regarding evidence and lack of evidence of the two components of issue (g) (construction and subsequent operation-service) that the ALJ ordered Havens to preserve, and which he did preserve and provided to the Mississippi Bankruptcy Court in the Maritime bankruptcy case, under its evidence preservation order. Havens requested several times that the ALJ and Enforcement Bureau obtain a copy of these electronically scanned files from the Bankruptcy Court. The evidence protection order did not permit Havens to possess a copy, because Maritime asserted that these records after Havens found them and had them preserved, which it earlier stated under oath were not of interest to Maritime and which were destroyed, became its confidential property. Because the ALJ and Enforcement Bureau failed to obtain and review this critical evidence directly concerning issue (g), the ALJ

committed reversible error and the Enforcement Bureau abrogated its most fundamental duties to the Commission under FCC 11-64.

Further, the ALJ committed reversible error by allowing the Enforcement Bureau to abandon its prosecution of Maritime, many months before the trial in December 2014 and through and after the trial. The Enforcement Bureau's only justification was to allege the abandonment was under "prosecutorial discretion." However, while in cases the government prosecutors can cease a prosecution, if it believes it has a bad case and lacks resources for further pursuit. However, that does not justify the government to "jump ship" and put on the case for the accused party. There is nothing in FCC 11-64 to justify that. The ALJ commented at the beginning of the trial in December 2014, that he had never in his career seen the Enforcement Bureau shift sides like that and end up putting on the defense case for the accused party. In the 11-71 hearing transcript, vol. 11, dated December 9, 2014, Judge Sippel stated the following at page 1260, lines 9-25:

9 JUDGE SIPPEL: Well, no, no, I opened the door again. I
10 take that back. I have a question though. I don't understand,
11 clearly, and maybe there is no explanation for it, but Mr. Havens
12 comes into this case as -- is invited into this case, not as an
13 initial party, but as a party who deserves -- should be in the case
14 because the information that he has brought to the attention of the
15 Commission.
16 In other words, kind of a -- well, that's basically my
17 understanding of why he's in here. And the idea would be that he
18 would be in here to assist the Bureau in prosecuting its case
19 against the Respondent, whoever that might be. I'll put it more in
20 a hypothetical way, this is the first case I ever had where the
21 Bureau comes around the other end and assists the Respondent and is
22 against the attacks of the intervener, in effect, or against the --
23 in other words, you got cases against each other, where normally,
24 you'd expect them to be combined against the Respondent.
25 It's flipped around. Can you explain that to me?

And later at page 1262 of the same transcript he states:

3 JUDGE SIPPEL: Wait just a minute. Let me finish this.
4 So if Mr. Havens hadn't intervened in this case, hadn't been

5 permitted to intervene in this case, we wouldn't even have an issue
6 today.

In this situation, had Havens not continued with the prosecution, on behalf of the Commission and its FCC 11-64 HDO-OSC, there would not have been a trial, because there must be prosecution of a party at a trial.⁵ And as soon as the trial finished, then Sippel erroneously removed Havens (and others) as parties and referred them to the Commission for an issue “character qualification”, all contrary to FCC rules. The Order should be overturned and the hearing redone because, as shown in Havens’ pending appeals of FCC 15M-14, Judge Sippel improperly removed Havens and the entities in which he is majority owner (and was controller) from the hearing in 11-71. Havens has further shown this improper action in his pending *Petition for Expedited Declaratory Ruling Regarding § 1.251(f)(3)*, filed April 5, 2016, in Dockets 11-71 and 13-85 and via ULS. That improper removal and denial of party rights is reversible error and makes the Order, and underlying proceeding and hearing, incurably defective.

Throughout the proceeding, the ALJ in some cases found that Havens cannot represent any of the Havens-controlled entities (some times called, with Havens, the “SkyTel” entities) in the proceeding. Havens responded that the ALJ had discretion to permit Havens to represent any of those entities under FCC rule §1.21(b). The ALJ did not explain why he would not permit Havens to represent said entities, after Havens asserted the obvious good cause for permitting that, which was that the full Commission in FCC 11-64 in many pages based that HDO-OSC upon Havens’ representation of those entities before the Wireless Bureau and that succeeded in compelling showings of fact and relevant law that led to the findings and issues for the hearing

⁵ Had the ALJ actually believed he had any basis to remove Havens and the associated companies from 11-71 (what to speak of referring to the Commission a “character issue” to be added to the proceeding), he would not have allowed Havens to prepare for and be the prosecutor at the trial (with attorney James Stenger on behalf of two Havens-controlled LLCs).

set forth in FCC 11-64. Rather than Havens causing any disruption in the hearing, as the ALJ generally asserted (with very little specification of particular events) in FCC 15M-14, the ALJ's inefficient and unjustified treatment of Havens caused delays and disruption. The evidence in the record shows that when Havens was not being subject to those improper procedural impediments, he consistently presented relevant facts and law, including those that persuaded the ALJ to deny the central attempt by Maritime and the Enforcement Bureau for an attempted settlement and trade by offering a large collection of alleged-valid site-based licenses for cancellation in exchange for keeping 16 other alleged-valid site-based licenses in certain major markets without any proof that any of them were validly constructed and then validly kept in permanent operation. The ALJ found that the facts and law that Havens presented as to why Maritime could not lawfully trade in that large collection of licenses in the middle of its bankruptcy, without permission of the bankruptcy court, was a compelling argument that the ALJ adopted to deny that attempt by Maritime and the Enforcement Bureau. That eventually led to Maritime admitting that that large collection of site-based licenses was not valid to keep or trade-in, but were invalid due to abandonment by Maritime years prior to the admission of that, which resulted in automatic termination by action of law under rules §1.955 and §1.946.

Since ALJ Sippel did not conduct a proper fact-finding hearing, the Order should be overturned. The Commission's *Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing*, FCC 11-64, 26 FCC Rcd 6520, 76 FR 30154 ("FCC 11-64") states as issue (a) the following:⁶

⁶ And at paragraph 29, page 12 (footnotes omitted, emphasis added):

29. Pursuant to section 1.2112 of the Commission's rules, an auction applicant is required to disclose certain ownership information to the Commission in its pre-auction short-form and post-auction long-form applications. Generally, under section 1.2112(a), the applicant must identify, among other things, the real parties in interest to the application, including the identity of all persons or entities directly or indirectly owning or controlling the applicant....The Commission has

(a) To determine whether Maritime failed to disclose all real parties in interest and other ownership information in its applications to participate in Auction No. 61, in willful and/or repeated violation of section 1.2112 of the Commission's rules, and whether Donald DePriest was such a real party in interest.

In the case of the Order and 11-71 proceeding, ALJ Sippel has acted on Maritime's "pending application" without knowing Maritime's actual ownership and control and real parties in interest, which makes the Order's decisions *void ab initio* and defective per FCC 11-64 and the FCC's rules and law. (Of course, that also makes the Commission's actions on Maritime's licensing applications defective and *void ab initio*).

FCC 11-64 also requiring fact-finding for determining issue (g) as stated in FCC 11-64 (emphasis added), "(g) To determine whether Maritime constructed or operated any of its stations at variance with sections 1.955(a) and 80.49(a) of the Commission's rules." And FCC 11-64 at footnote 164 reiterated that a fact-finding hearing was to occur. In addition, at items 5, paragraph 61, regarding "Termination of Authorizations", FCC 11-64 stated that there was to be a hearing due to material questions of fact (footnotes omitted):

.... In the instant case, one of the petitioners challenging Maritime alleges that Maritime's licenses for site-based AMTS stations have canceled automatically because stations either were never constructed by Maritime's predecessor-in-interest or because operation of the stations has been permanently discontinued. We conclude that there is a disputed issue of material fact with respect to whether the licenses for any of Maritime's site-based AMTS stations have canceled automatically for lack of construction or permanent discontinuance of operation.....an appropriate issue will be designated to determine whether any of Maritime's site-based licenses were constructed or operated in violation of sections 1.955(a) and 80.49(a) of the Commission's rules.

further noted that its rules "provide specific guidance to applicants, to provide transparency at all stages in the competitive bidding and licensing process; and, finally to ensure that the Commission, the public, and interested parties, are aware of the real party or parties in interest before the Commission acts on a pending application.

The “one of petitioners” was Havens, and the facts that gave rights to this “disputed issue of material fact with respect to....Maritime’s site-based AMTS stations” occurred after the renewal applications were filed by Maritime’s predecessors. Thus, it was improper for ALJ Sippel to find in the 11-71 hearing that Maritime’s site-based stations were validly constructed based on its predecessors renewal applications granted by the Bureau, when the Commission in FCC 11-64 raised material questions of fact about them that were to be determined in a fact-finding hearing (“...because stations either were never constructed by Maritime's predecessor-in-interest.... We conclude that there is a disputed issue of material fact”). Thus, ALJ Sippel’s ruling in 11-71 on the construction issue was erroneous and contrary to FCC 11-64, and therefore must be overturned. ALJ Sippel failed to conduct a fact-finding hearing to determine the issue of construction. Instead, he erroneously found construction based upon renewal applications that the Commission’s own FCC 11-64 called into material question of fact.

FCC 11-64 also contains issues (a)-(f) and (h)-(j), and it makes clear that the purpose of the hearing is to obtain facts, not stipulations by parties on the same side. See also, FCC 11-64 at its paragraph 6 on page 3. The leading issue in FCC 11-64 was issue (a), dealing with ownership information and affiliates.⁷ That issue (a) was never properly determined by ALJ Sippel or the Commission, and that is clearly a fundamental, threshold-gating issue, because before acting on an application the FCC must know who it is dealing with, who are the real parties in interest, who will benefit from the application, etc. That is probably why the Commission, as it was comprised back in 2011, had that as the VERY FIRST ISSUE to be determined. However, in the subject case in Docket 11-71, ALJ Sippel never determined (and nor has the Commission at any time), what is MCLM’s actual ownership and who are the real parties in interest and who are its affiliates. Appellant asserts that without first determining that fundamental threshold-gating

⁷ See e.g., FCC 11-64 at paragraphs 3-4.

issue (a), that all actions taken by Maritime and all actions taken by ALJ Sippel, the Enforcement Bureau and the FCC to act on those actions, including Maritime's licensing applications, or to provide benefits or relief to Maritime and its successor, Choctaw, are *void ab initio* and unlawful and prohibited by the Communications Act, including 47 U.S.C. §309(e), and not in the public interest and are reversible error.

FCC 11-64 at paragraph 36 at paragraph 34 made clear that the Commission needs to resolve material questions of fact via hearing because their resolution is fundamental to its licensing process. Yet, ALJ Sippel did not conduct a hearing to resolve material questions of fact on the remaining 16 stations or on the issue of construction. The 11-71 proceeding and Order are contrary to FCC 11-64, the most fundamental FCC licensing rules, and to maintaining the integrity of the FCC's licensing process, and for this reason should be overturned.

Since ALJ Sippel did not conduct a proper fact finding and determination of Maritime's ownership and control and the construction and operational status of its site-based stations, there remain "substantial and material question of fact" as to issues (a) and (g), as well as the other issues listed in FCC 11-64 at its paragraph 62. Further, Appellant asserts that ALJ Sippel could not accept a stipulation by Maritime when ALJ Sippel does not even know who owns Maritime and who are the real parties in interest in Maritime and who is speaking for it and who will benefit from its actions. In fact, Appellant asserts that without first determining issue (a), ALJ Sippel could not accept any representation by Maritime, especially when the facts cited in FCC 11-64 are considered (facts that Havens uncovered, showing Maritime's repeated misrepresentations, lack of candor and inability to provide accurate, truthful information on the first pass). Maritime has never filed an accurate and complete Form 602. Appellant asserts that acceptance of any stipulation in that situation, where an entity's ownership and control are not known and disclosed, cannot be in the public interest or acceptable under the Communications Act. The Communications Act requires under Section 310(d) that a licensee has to apply for a

transfer in control. That was never done when MCLM admitted to spousal affiliation with Donald DePriest, and where evidence, per FCC 11-64, shows that there was inaccurate disclosure of control in MCLM from its inception, and where the FCC has not made a final determination. That cannot be avoided or cured by the Order.

Another defect of the Order is that ALJ Sippel (and the FCC) has failed to sanction Maritime for its admission that it kept (with knowledge of its counsel and its creditors) terminated site-based stations up to 2.5 years, while seeking to keep said stations in 11-71 and by its Second Thursday relief request (ALJ Sippel and the Commission have not taken one step to sanction Maritime for that criminal fraud, while on the other hand, they have sat on Havens' and others' appeals of FCC 15M-14, when they know that Havens' is being severely damaged and prejudiced by FCC 15M-14).⁸

Re: Destruction of Records: Destruction of records is criminal in federal investigation. Maritime admitted in 11-71 that it abandoned and allowed to be destroyed the records of construction and operation for its site-based stations. It also later admitted that some of said records were not actually destroyed, but then it fought against those being brought into 11-71 by Havens, or designated them all as "confidential" under the protective order in the case, even though they could not be confidential because they were either in the public record already (see e.g., Havens' and Maritime's filings regarding FOIA Control No. 2014-663 and -664) or because Maritime had abandoned them and already stated that it did not intend to re-construction and/or operate them any more (there can be no risk of business loss or damage caused by release of

⁸ See, e.g., MCLM's Response to Interrogatories, Aug. 4, 2014, in Docket 11-71, under penalty of perjury by Sandra DePriest (emphasis added):

Shortly before May 31, 2012, after consultation with, inter alia, bankruptcy counsel, the secured creditors, and the unsecured creditor's committee, MCLM decided to permanently abandon these facilities.

records, where the licensee has admitted it does not intend to operate the stations anymore to which the records are relevant). Given the facts in the record in 11-71 that show Maritime improperly destroyed or withheld documents, the entire 11-71 hearing must be redone, if the Commission does not find the stations as terminated on its own motion, and the Order overturned.

Violation of Havens' Rights

Appellant does not reiterate herein again what is in those pending appeals in Docket No. 11-71 since they are already before the FCC. They are also fully referenced and incorporated herein above. Since Judge Sippel improperly removed Havens and others as parties to the 11-71, and that matter has not been resolved and is still pending on appeal, it makes the Order premature and defective. Judge Sippel's and the Commission's failure to address Havens pending appeals prior to the Order is a violation of Havens' Due Process rights and his First Amendment rights to petition the government for redress under the Constitution. See also the discussion in Havens' *Memo in Support of and Related to Notice of Appeal*, filed October 6, 2017, regarding defects of FCC 15M-14, and the harm, damages and prejudiced caused to Havens by FCC 15M-14 and the ALJ and Commission inaction on the appeals.

Under Rule §1.301, interlocutory appeals are to be decided upon by the Commission and they have to be filed within 5 days. Clearly, the short filing window in §1.301 is so that the Commission can make a decision quickly on the party's interlocutory appeal so that the issue of the denial or termination of their participation is resolved quickly and the hearing can resume without a cloud over its validity as to that issue. In this case, the Commission failed to decide on those pending appeals in any timely way, and therefore, the entire 11-71 hearing proceeding is subject to reversible error because of both the Commission's and Judge Sippel's failure to properly act and decide upon Havens pending appeals for over two years. Two years was clearly

more than enough time for the Commission and Judge Sippel to act on those pending appeals prior to Judge Sippel continuing with the proceeding in 11-71 and eventually issuing the Order.

Havens believes that both the Commission and Judge Sippel had a duty under FCC rules and the Congressional intent of those rules and Section 309(d), to decide promptly on those appeals and that their years-long inaction makes the entire 11-71 proceeding defective and subject to reversible error and a rehearing.

Other. I reserve the right to and intend to supplement this Appeal brief after the transcript is available of the evidentiary hearing held on October 27, 2017 in the MCLM bankruptcy case. I attended the hearing, testified, and argued certain legal issues. In this hearing, MCLM, by Thomas Keller, provided sworn factual testimony to various alleged factual positions of MCLM in this 11-71 proceeding that are contradictory to MCLM positions taken in this proceeding of a decisional nature, and in proceeding 13-83 as well. Both of the contrary positions should be rejected in these FCC proceedings and the largely parallel bankruptcy proceeding. Thus, I intend to provide a copy of the transcript and some of the exhibits the court accepted at the hearing, to use in this Appeal, as further good cause to grant the Appeal.

Conclusion

For the reasons given, the relief requested herein should be granted.

Respectfully submitted,

October 30, 2017,



Warren Havens
Warren Havens, an Individual

Contact information is on the Caption page.

Declaration

I, Warren Havens, declare under penalty of perjury that the foregoing filing was prepared by me and that the factual statements and representations contained herein known to me are true and correct.



Warren Havens

October 30, 2017

Certificate of Filing and Service

I, Warren C. Havens, certify that I have, on October 30, 2017: ^{[*]1/}

(1) Caused to be served, by placing into the USPS mail system with first-class postage affixed unless otherwise noted below, a copy of the foregoing filing to the following parties and other persons:^{[*]2/}

Hon. Richard L. Sippel
Chief Administrative Law Judge
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Washington, D.C. 20554

David Senzel
FCC Office of General Counsel
By email to: David.Senzel@fcc.gov

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^{[*]1/} The mailed service copies being placed into a USPS drop-box today may be after business hours and thus may not be processed and postmarked by the USPS until the next business day.

^{[*]2/} Appellant does not admit by including any person on this list that they are a proper party to any matter described in this filing. Some are included out of an abundance of caution.

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(2) Caused to be filed the foregoing filing as stated on the caption page, and thus, as I have been instructed, ^[**]3/ provide notice and service to any party that has or may seek to participate in Dockets 13-85 and 11-71.

(3) Caused to be sent the foregoing filing via email to the following:

Office of the Inspector General

David Hunt, Inspector General, David.hunt@fcc.gov

Christopher Shields, agent, Christopher.shields@fcc.gov

^[**]3/ The FCC Office of General Counsel informed me regarding others' filings concerning MCLM relief proceedings that I was served in this fashion. I assume OGC does not apply a different standard to others. If OGC has a different standard, it can make that clear and public.



Warren Havens